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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,567	07/17/2003	Thomas Placido Lutri		2111

7590
Robert Casud, JR.
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01/26/2007

EXAMINER

JACKSON, BRANDON LEE

ART UNIT	PAPER NUMBER
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3772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/621,567

Applicant(s)

LUTRI ET AL.

Examiner

Brandon Jackson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7/17/2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claim 4 recites the limitation "the elevated central bridging segment" in line 2.

There is insufficient antecedent basis for this limitation in the claim.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-3, 7, 10-12, and 14-16 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 7,122,712. Although the conflicting claims are not identical, they are not patentably distinct from each other because the application claim 1 is merely a broader

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recitation of patented claims 1-2 and therefore, the patented claims 1-2 "anticipate" the application claim 1.

With respect to claim 1, all of the limitations can be found in claim 1 and 2 of patent '712, except the adhesive. Examiner is interpreting the netting having a plurality of openings in patent '712 to be equivalent to the strip having a plurality of openings in the application. With respect to claim 2, the limitations can be found in claims 1 and 2 of patent '712. With respect to claim 3, the limitations can be found in claims 1 and 2 of patent '712 except for the recitation of applying the bandage to an animal. However, this is an intended use recitation and the bandage of claims 1 and 2 of patent '712 is capable of being applied to an animal. With respect to claim 7, limitations of the claim can be found in claims 1 and 2 of patent '712, except for the material being transparent. However, using a transparent material is a mere design choice because provides no advantage, solves no stated problem, or patentably distinguishes the bandage.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to make the bandage of transparent material, as disclosed in claim 3 of patent '712. With respect to claims 10 and 11, all of the limitations can be found in claims 1 and 2 of patent '712. With respect to claim 12, limitations can be found in claims 1 and 2 of patent '712, except for the bandage being non-absorbent. It would have been obvious to one of ordinary skill in the art at the time of the invention to have the bandage made of a non-absorbent material so fluids could pass through it to treat the wound, as disclosed in claim 6 of patent '712. With respect to claim 14, limitations can be found in claims 1 and 2 of patent '712, except for fluids that may pass through the

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bandage. It would have been obvious to one of ordinary skill in the art at the time of the invention allow medicinal fluids to pass through the bandage to treat the wound, as disclosed in claim 5 of patent '712. With respect to claim 15, limitations can be found in claims 1 and 2 of patent '712, except for that the bandage provides direct visualization to the wound. Therefore, It would have been obvious to one of ordinary skill in the art at the time of the invention to allow visualization to the wound in order for one to know how it needs to be treated, as disclosed in claim 4 of patent '712. With respect to claim 16, all the limitations can be found in claims 1 and 2 of patent '712.

Claims 1-3, 10, 11, and 15-16 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2 of copending Application No. 11/532,900. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of the application is merely broader than claim 1 of Application '900.

With respect to claims 1-3, 10, and 15-16; all the limitations can be found in claim 1 of Application '900. With respect to claim 11, all the limitations can be found in claims 1 and 2 of Application '900.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-3, 5-6, 14-17, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by VanDruff (U.S. Patent Application Publication 2002/0193721). Vandruff discloses an adhesive strip (100) containing a plurality of openings (70), wherein the strip (100) can be adhered to a tissue surface (fig. 10) across a tissue separation (par. 0033), and wherein fluid can be applied through the openings (70) of the bandage (100) and directly contact the tissue separation (par. 0036, lines 6-8). The tissue separation (90) is an open, wound, laceration, or surgical incision (par. 0029). The bandage (100) can be adhered to a tissue surface of a human (par. 0033, lines 1-5). The openings (70) can be formed of geometric shapes or rectangles (82). The bandage can be packaged as a roll containing a plurality of openings (par. 0046, lines 7-11). The fluid applied through the openings (82) is an antibiotic (par. 0036, lines 6-8). The openings (82) allow expression of blood that can be removed by wiping or blotting (par. 0036) and they allow fluids to pass through in both directions (par. 0036). The openings (82) allow direct visualization (fig. 10). VanDruff has disclosed all the elements of the wound closure kit of claim 19; therefore the kit would be inherent because it would have resulted from having the VanDruff device.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 7, 13, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over VanDruff (U.S. Patent Application Publication 2002/0193721). VanDruff substantially discloses the claimed invention; see claim 1 rejection above, VanDruff fails to disclose the bandage being formed of transparent material and the bandage being packaged in a sterile condition. However, it is commonly known in the art that surgical bandages are packaged in a sterile condition in order to prevent infection when applied to a wound. At the time of the invention, it would have been an obvious matter of design choice to a person of ordinary skill in the art to make the bandage of a transparent material because applicant has not disclosed that the transparent color provides an advantage, is used for a particular purpose, or solves a stated problem. Therefore, it would have been prima facie obvious to modify VanDruff to obtain the

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invention of claim 7 because such a modification would have been considered a mere design consideration, which fails to patentably distinguish over the prior art of VanDruff.

VanDruff discloses the elements of the claimed invention; therefore the method steps would have been obvious to one of ordinary skill in the art at the time of the invention because they would have resulted from the use of the VanDruff device.

Claims 4, 20-27, 29-34, 38-39, and 44-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over VanDruff (U.S. Patent Application Publication 2002/0193721) in view of Weitzner (U.S. Patent 2,751,909). VanDruff discloses an adhesive strip (100) containing a plurality of openings (70), wherein the strip (100) can be adhered to a tissue surface (fig. 10) across a tissue separation (par. 0033), and wherein fluid can be applied through the openings (70) of the bandage (100) and directly contacts the tissue separation (par. 0036, lines 6-8). The tissue separation (90) is an open, wound, laceration, or surgical incision (par. 0029). The bandage (90) can be adhered to a tissue surface of a human (par. 0033, lines 1-5). The openings (70) can be formed of rectangles (82). The bandage can be packaged as a roll containing a plurality of openings (par. 0046, lines 7-11). The fluid applied through the openings (82) is an antibiotic (par. 0036, lines 6-8). The openings (82) allow expression of blood that can be removed by wiping or blotting (par. 0036) and they allow fluids to pass through in both directions (par. 0036). The openings (82) allow direct visualization (fig. 10) because they are formed by parallel fibers with spaces there between (fig. 4). The bandage (100) can be formed rolls of continuous material with adhesive on at least one side (par. 0046, lines 5-11). VanDruff fails to disclose additional layers of material for

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elevating the bandage to form a central bridging segment, transparent material, end segments and central bridge made of different materials, and the bandage being packaged in a sterile condition. However, Weitnzer teaches additional layers (11) suitable for raising the elevated central bridging segment (fig. 7) and forming a single continuous piece. Also, teaches strips (11) and wound coverings (9) made of different materials (col. 2, lines 3-25). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the VanDruff bandage with the outer layered segments as taught by Weitzner in order to make it easier to position and release the bandage.

At the time of the invention, it would have been an obvious matter of design choice to a person of ordinary skill in the art to make the bandage of a transparent material because applicant has not disclosed that the transparent color provides an advantage, is used for a particular purpose, or solves a stated problem. Therefore, it would have been prima facie obvious to modify VanDruff/Weitzner to obtain the invention of claims 38-39 because such a modification would have been considered a mere design consideration, which fails to patentably distinguish over the prior art of VanDruff/Weitzner.

With respect to claim 44, it is commonly known in the art that surgical bandages are packaged in a sterile condition in order to prevent infection when applied to a wound, therefore the VanDruff/Weitzner device is packaged in a sterile condition.

Claims 8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over VanDruff (U.S. Patent Application Publication 2002/0193721) in view of Weiss (U.S.

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Patent 6,471,715). Vandruff substantially discloses the claimed invention; see claim 1 rejection above, however Vandruff fails to disclose a bandage made of non-absorbent or bio-absorbent fibers. However, Weiss teaches sutures to close wounds formed by non-absorbent or bio-absorbent fibers (col. 3, lines 54-58). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Vandruff bandage with the fibers as taught by Weiss in order for the bandage to be made of a non-toxic material that will not infect the wound while covering it and prevent the user from experiencing the pain of removing the bandage from the wound.

Claim 9 is rejected under 35 U.S.C 103(a) as being unpatentable over VanDruff (U.S. Patent Application Publication 2002/0193721) in view of Ito et al. (U.S. Patent 5,690,610). VanDruff substantially discloses the claimed invention; see claim 1 rejection above, VanDruff fails to disclose a protective layer over the adhesive. However, Ito teaches a release layer (12) to cover the adhesive layer (2) until the bandage (1) is ready to be applied. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the VanDruff bandage with a release layer to protect the adhesive layer from unwanted bonding.

Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over VanDruff (U.S. Patent Application Publication 2002/0193721) in view of Heim (U.S. Patent 5,807,341). VanDruff substantially discloses the claimed invention; see claim 1 rejection above, VanDruff fails to disclose pull strings for detaching the end segments from the adhesive. However, Heim teaches a release string that detaches portion of the dressing from another (col. 6, lines 52-61). Therefore, it would have been obvious to

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modify the VanDruff device with the release strings as taught by Heim because it makes the central bridge easier to be removed from the patient.

Claims 36-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over VanDruff (U.S. Patent Application Publication 2002/0193721) in view of Weitzner (U.S. Patent 2,751,909) and Heim (U.S. Patent 5,807,341). VanDruff/Weitzner substantially discloses the claimed invention; see claim 1 and 20 rejections above, VanDruff/Weitzner fails to disclose pull strings for detaching the end segments from the adhesive. However, Heim teaches a release string that detaches portion of the dressing from another (col. 6, lines 52-61). Therefore, it would have been obvious to modify the VanDruff/Weitzner device with the release strings as taught by Heim because it makes the central bridge easier to be removed from the patient.

Claims 40 and 42-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over VanDruff (U.S. Patent Application Publication 2002/0193721) in view of Weitzner (U.S. Patent 2,751,909) and Weiss (U.S. Patent 6,471,715). Vandruff/Weitzner substantially discloses the claimed invention; see claims 1 and 20 rejections above, however Vandruff/Weitzner fails to disclose a bandage made of non-absorbent or bio-absorbent fibers. However, Weiss teaches sutures to close wounds formed by non-absorbent or bio-absorbent fibers (col. 3, lines 54-58). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Vandruff/Weitzner bandage with the fibers as taught by Weiss in order for the bandage to be made of a non-toxic material that will not infect the wound while covering it and prevent the user from experiencing the pain of removing the bandage from the wound.

Claim 41 is rejected under 35 U.S.C 103(a) as being unpatentable over VanDruff (U.S. Patent Application Publication 2002/0193721) in view of Weitzner (U.S. Patent 2,751,909) and Ito et al. (U.S. Patent 5,690,610). VanDruff/Weitzner substantially disclose the claimed invention; see claim 1 and 20 rejections above, VanDruff/Weitzner fail to disclose a protective layer over the adhesive. However, Ito teaches a release layer (12) to cover the adhesive layer (2) until the bandage (1) is ready to be applied. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the VanDruff/Weitzner bandage with a release layer to protect the adhesive layer from unwanted bonding.

Claims 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over VanDruff (U.S. Patent Application Publication 2002/0193721) in view of Weitzner (U.S. Patent 2,751,909) and Hart (U.S. Patent 5,876,365). VanDruff/Weitzner substantially discloses the claimed invention; see claim 1 and 20 rejections above, VanDruff/Weitzner fail to disclose at least one of the end segments having two or more appendages. However Hart discloses a bandage (10) having two appendages (34) on one side. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the VanDruff/Weitzner bandage with the additional straps as taught by Hart to make it easier to position the bandage over a rounded surface.

Claims 51 and 52 are rejected 35 U.S.C. 103(a) as being unpatentable over VanDruff (U.S. Patent Application Publication 2002/0193721) in view of Weitzner (U.S. Patent 2,751,909), Hart (U.S. Patent 5,876,365), Ito et al. (U.S. Patent 5,690,610), Weiss (U.S. Patent 6,471,715), and Heim (U.S. Patent 5,807,341).

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Vandruff/Weitzner/Hart/Ito/Weiss/Heim teaches all the elements of the claimed invention, therefore the method steps and kit would be obvious to one of ordinary skill in the art because they would have resulted from the use of the Vandruff/Weitzner/Hart/Ito/Weiss/Heim device.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hathman (U.S. Patent 5,086,763), Clark et al. (U.S. Patent 5,445,597), McClees et al. (U.S. Patent 5,437,623).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brandon Jackson whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BLJ

Brandon Jackson
Examiner
Art Unit 3772

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1/28/07